



JAMES T. MARTIN
EXECUTIVE DIRECTOR
UNITED SOUTH AND EASTERN TRIBES, INC.

TESTIMONY
BEFORE THE COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES

OVERSIGHT HEARING ON H.R. ____ (POMBO), TO AMEND THE INDIAN GAMING
REGULATORY ACT TO RESTRICT OFF-RESERVATION GAMING, AND FOR OTHER PURPOSES.

March 17, 2005



STATEMENT BY

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Good afternoon Chairman Pombo, Ranking Member Rahall, and distinguished members of the Committee on Resources. My name is Tim Martin, and I am Executive Director of United South and Eastern Tribes, Inc. I am pleased to appear before the committee to discuss Chairman Pombo's proposed legislation to restrict off-reservation gaming. As you know, United South and Eastern Tribes, Inc. passed a resolution over two years ago raising concerns with the increasing activities of shady, non-Indian developers and a handful of tribes seeking to establish casinos in states where they have no reservation. Consequently, we thank Chairman Pombo for his leadership in bringing the Committee's attention to these activities, and we look forward to working with the Committee as it considers corrective legislation.

United South and Eastern Tribes, Inc. (“USET”) is a non-profit, inter-tribal organization that collectively represents its member Tribes at the regional and national levels. USET represents twenty-four federally recognized Tribes.¹ Included among the members of USET are some of the largest gaming tribes in the United States, such as the Mashantucket Pequots, the Mohegan Tribe, the Oneida Indian Nation, the Mississippi Band of Choctaw, the Seminole Tribe, and the Miccosoukee Tribe. We also represent tribes with more modest gaming facilities, as well as tribes that currently do not engage in gaming. To be specific, of the 24 Indian nations that comprise USET, 15 engage in Indian gaming pursuant to the Indian Gaming Regulatory Act of 1988 (“IGRA” or “the Act”). Nine tribes conduct Class III gaming pursuant to a tribal-state compact, and six tribes engage in Class II gaming.

Congress enacted the IGRA “to promote tribal economic development, tribal self-sufficiency, and strong tribal government.”² The Act is doing just that. Indian gaming has been described as “the only federal Indian economic initiative that ever worked.” That is absolutely correct. Indian gaming has served as a critical economic tool to enable Indian nations to once again be able to provide essential governmental services to their members, re-assert their sovereignty, and promote the goals of self-determination and self-sufficiency.

Prior to the advent of Indian gaming, many Indian nations, while legally recognized as sovereign governments, were not able to provide basic, governmental services to their people. They had all of the legal attributes of sovereign nations, but many did not have the practical ability to be an effective government for their members. Consequently, despite a strong and proud tradition, Indian nations were stuck in a two hundred year cycle of poverty.

Today, the proceeds of Indian gaming operations go directly into providing essential governmental services to tribal members. Our Members have used these revenues to invest in dozens of Member programs, including home ownership initiatives, tuition assistance for everything from private schools to post-doctorate work, national health insurance for tribal members, and access to top-notch health clinics. Gaming has also allowed Indian nations to take tremendous steps to reclaim their heritage.

Reclaiming a past heritage has been a priority for all USET members, and gaming proceeds have enabled Indian nations to make tremendous gains in this area. In many

¹ The members of USET are: The Chitimacha Tribe of Louisiana, the Seneca Nation of Indians, the Coushatta Tribe of Louisiana, the Eastern Band of Cherokee, the Mississippi Band of Choctaw, the Seminole Tribe of Florida, St. Regis Band of Mohawk Indians, the Miccosukee Tribe, the Penobscot Indian Nation, the Passamaquoddy Pleasant Point Tribe, and the Passamaquoddy Indian Township Tribe, the Houlton Band of Maliseet Indians, the Tunica-Biloxi Indians of Louisiana, the Poarch Band of Creek Indians, the Narragansett Indian Tribe, the Mashantucket Pequot Tribe, the Wampanoag Tribe of Gay Head (Aquinnah), the Alabama-Coushatta Tribe of Texas, the Oneida Indian Nation, the Aroostook Band of Micmac Indians, the Catawba Indian Nation, the Jena Band of Choctaw Indians, the Mohegan Tribe of Connecticut, and the Cayuga Nation.

² 25 U.S.C. §2701(4)

respects, these efforts culminated in the dedication of the National Museum of the American Indian in September 2004. I am proud to note that the three largest contributions to the building of this tremendous institution came from Indian nations that are Members of USET.³

Unfortunately, however, USET has been increasingly concerned with a handful of Indian tribes and wealthy non-Indian developers who are seeking to establish Indian casinos far away from their existing reservations in different states from where the tribes are currently located.

In at least twelve states, Indian tribes are seeking to move across state lines to take advantage of more lucrative gaming markets. In most cases, these efforts are being funded by shadowy developers who underwrite the litigation expenses, lobbyists fees, and even the cost of land in exchange for a cut of the profits.

This kind of “reservation shopping” runs contrary to the intent behind IGRA and well-established federal Indian policies. The basic idea of IGRA was to protect the *governmental* rights of tribes over their lands while assuring regulation of casino gaming. But these proposed Indian casino deals are not based on governmental rights. In most instances, the developers and tribes are using land claims or the threat of land claims to promote casinos in far-off places. In these instances, Indian gaming is not being used as a tool by tribes to promote economic activities on their lands, it is being used as a tool by developers who simply need Indian tribes to make their deals for casinos work.

Let me give you a typical scenario for how the developers normally seek to gain approval for an Indian casino on behalf of an out-of-state tribe. First, the developer will extend a “carrot” to the state and local governments. The developer hires lobbyists who try and convince state and local officials that an Indian casino will benefit the state by creating jobs and economic activity. The developer will offer the state and local communities a cut of the proceeds of the Indian casino in exchange for state support. In most cases, these offers violate IGRA’s prohibition against taxing Indian casinos. But the out-of-state tribes are willing to pay a tax because these ventures do not impact the enterprises where the tribes are currently located. The developers also are willing to agree that the out-of-state tribe will waive most aspects of its sovereignty. In other words, the out-of-state tribe will agree to submit to state and local jurisdiction in return for the ability to establish an Indian casino in a new state. Whatever concessions the out-of-state tribes are willing to make are fine because they do not impact the tribes’ primary reservation.

Unfortunately, when there are other tribes located in those states where out-of-state tribes are seeking a casino, the offers to submit to state jurisdiction and pay hefty taxes on their gaming facilities severely undermine the in-state tribes’ continuing efforts to defend their sovereignty. Why? Because the out-of-state tribes’ offers become the new baseline upon which the State will seek concessions from the in-state tribes when

³ Jim Adams, *Leaders guide museum with humble yet historic partnership*, Indian Country Today (Lakota Times), Sept. 22, 2004, at 1.

negotiating gaming compact renewals, tax compacts, and local community jurisdictional agreements. The State will ask the in-state tribe why it won't be as reasonable as the out-of-state tribes who are willing to relinquish their sovereignty in exchange for the right to operate a casino.

If the "carrot" approach does not work for the developer, the developer typically raises the specter of land claims litigation as a "stick" to compel the state to negotiate with the tribe for a casino. In fact, there seem to be a handful of developers who have created a new business model that relies on tribes with existing or potential land claims as a means to establish lucrative casinos in geographically attractive locations.

So far, none of the out-of-state Indian tribes has obtained the necessary approvals to establish the casinos they are seeking. If even one of these deals is approved, however, the floodgates for this kind of reservation shopping will open throughout the United States. There will be no legal rationale to prohibit other tribes from establishing casinos in far away states, and developers will seek casinos for potentially dozens of other tribes throughout the United States and even Canada. There are many tribes that assert land claims to land formerly occupied by ancestors of tribal members. Other tribes would undoubtedly be encouraged to assert such claims as a route to casino riches. Given that most tribes in the west previously migrated from lands in the east, it will not be difficult for them to contrive some nexus to lands situated in the eastern part of the United States—especially in areas that are potentially lucrative casino sites.

In the meantime, the activities of these developers and out-of-state tribes create uncertainty for states and local communities, and undermine the ability of in-state Indian nations to defend their homelands and sovereign rights.

Consequently, in early 2003, USET was the first Native American organization to adopt a resolution raising concerns with the encroachment of out-of-state tribes on lands on which they have no recognized jurisdiction. The resolution called on Congress to oppose the efforts of these so-called "out-of-state tribes" to establish casinos in different states.⁴ A copy of this Resolution is attached.

This year, USET again adopted a resolution opposing reservation shopping.⁵ A copy of this Resolution is attached. The Resolution includes the following admonition to Congress:

Resolved that the USET Board of Directors calls upon the United States Congress to enact legislation that would prohibit, and oppose any legislation that would allow, individual Indian Nations or Tribes from establishing a reservation, acquiring trust land or exercising governmental jurisdiction in a state other than the state

⁴ *Illegal Gaming by the Seneca-Cayuga Tribe of Oklahoma in the State of New York*, USET, Inc. Res. No. 2003:057, Feb. 6, 2003

⁵ *Reservation Shopping*, USET, Inc. Res. No. 2005:022, Feb. 10, 2005

where they are currently located or at a remote location to which they have no aboriginal connection....⁶

In order that the Committee understands the extent of this kind of reservation shopping across the country, the following is a summary of what we know is happening in at least twelve different states.

⁶ *Id.*

Colorado

Cheyenne-Arapahoe Tribes of Oklahoma: In 2004, the consolidated Cheyenne-Arapahoe Tribes filed a 27 million acre land claim with the Department of Interior, claiming all of Denver and Colorado Springs. In exchange for dropping the claims, the Cheyenne-Arapahoe Tribes have proposed to develop a Las Vegas-style gaming facility near the Denver Airport. This proposal has met opposition from the state and federal representatives of Colorado. In late 2003, a developer sought to purchase 500 acres east of Denver, near the Denver International Airport, to create a reservation for the tribes.⁷

Georgia

Kialegee Tribal Town of Oklahoma: The tribe sought to move to Hancock County, Georgia to establish a casino and entertainment project. County officials were interested in the plan, because of extreme poverty in the county, but the previous Governor was opposed to casino gaming. The tribe also sought land in Texas and other parts of Georgia in the past.⁸

Illinois

Miami Tribe of Oklahoma: The tribe is seeking 2.6 million acres in east-central Illinois based upon a treaty from the 1800s. The tribe sued landowners in 2000, and dropped the lawsuit in 2002. The tribe has indicated it would agree to a casino in exchange for dropping the claim.⁹

Ho-Chunk Nation of Wisconsin: The tribe is seeking to build the largest casino in Illinois, which would be located in the Chicago suburb of Lynwood. There is strong opposition from the community, but the plan has been supported by Congressman Jesse Jackson, Jr. (D-IL). The proposed casino would be located approximately 296 miles from the tribe's current reservation.¹⁰

Prairie Band Potawatomi Nation of Kansas: The tribe has sought a gaming compact with the Governor, which prompted the State's legislature to pass legislation that would require the Governor to get approval from the General Assembly before signing a deal with any Native American tribe. The Governor vetoed the bill, but the veto was overridden and has gone into law. The tribe was seeking land outside of Chicago for a casino.¹¹

Indiana

Miami Tribe of Oklahoma: The tribe is negotiating with the state to put a casino in Gary, Indiana. The tribe has negotiated with the mayor of Gary since 2002.

⁷ "Owens to denounce casino," *The Denver Post*, August 29, 2004; "Indians' leveraged efforts for casinos reach beyond Colo.," *The Denver Post*, August 16, 2004

⁸ "Kialegee gamble on casino bid," *The Tulsa World*, November 14, 1999

⁹ "Johnson testifies on Hill; Bill centers on tribal land disputes," *The Pantagraph*, May 9, 2002

¹⁰ "Village opposes Lynwood casino," *Chicago Tribune*, November 19, 2004; "Weller will battle Ho-Chunk proposal," *Chicago Tribune*, August 28, 2004.

¹¹ "Indian gaming law takes effect," *The Daily Chronicle*, November 20, 2004.

The tribe unsuccessfully attempted to place a casino in Terre Haute, Ind. as well. The proposed casino would be located approximately 610 miles from the tribe's current reservations.¹²

Kansas

Delaware Tribe of Oklahoma: The tribe signed with a California-based developer to help secure gaming rights near Kansas City, Kansas. A land claim is pending.¹³

Miami Tribe of Oklahoma: The tribe attempted to open a casino in Kansas in 1999, but the plan was rejected by the federal government.¹⁴

Wyandotte Tribe of Oklahoma: The tribe expressed interest in opening a casino in Edwardsville, KS, and U.S. Congressman Dennis Moore (D-KS) introduced legislation in 2002 to allow the casino. The Governor has expressed reservations with this plan.¹⁵

Maryland

Delaware Nation of Oklahoma: The tribe agreed to take over land in Anne Arundel County to create a landfill, run by a local development company. The tribe expressed interest in the land for establishing a high stakes bingo parlor, and if slots are approved by the state, offering those as well.¹⁶

New Jersey

Delaware Tribe of Oklahoma; Delaware Nation of Oklahoma: The two tribes (which are separate entities recognized by the federal government) attempted to open a casino in 1999 in Wildwood, New Jersey, but state and local officials opposed the plan.¹⁷

¹² "Tribe wins step in fight for N.Y. casino," *The Daily Oklahoman*, November 16, 2004; "Midwest Tribes See Big Payoffs in the East," *The New York Times*, March 24, 2003; "...the Oklahoma-based tribe, which has been negotiating to open a casino in northern Indiana, recently declared that the tribe has a legal claim to 100 percent of the land in [5] counties." "An obvious ploy," *South Bend Tribune*, July 2, 2002.

¹³ "Delaware Indian tribes face long odds to win gambling effort," *Newsday.com* article, May 15, 2003.

¹⁴ "Tribe aims for casino deal," *The Pantagraph*, Jan. 12, 2003.

¹⁵ "Sebelius not sure she'll support tribal gambling plan," *Associated Press*, Jan. 25, 2003.

¹⁶ "[Halle Cos.] has agreed to pay an Oklahoma-based Indian tribe as much as \$1.4 million a year to take over the land and to apply to make it tribal property...To make its case to the [BIA], the tribe presented its history, including evidence of its ancestral ties to Maryland." "Surprising Ally Joins Landfill Quest; Thwarted Developer Would Make Indian Tribe Owner of Arundel Site," *The Washington Post*, November 1, 2004.

¹⁷ *Newsday.com* article, "Delaware Indian tribes face long odds to win gambling effort," AP, May 15, 2003; *Philly.com* article, "2 Okla. tribes seek fortune in Penna.," *Philadelphia Inquirer*, July 7, 2003

New Mexico

Fort Sill Apache Tribe of Oklahoma: The tribe is considering building a casino in southern New Mexico, and might oppose plans by an in-state tribe, the Jemez Pueblo to build in the area as well.¹⁸

New York

Stockbridge-Munsee Tribe of Wisconsin: This tribe has offered to settle a land claim with the state in exchange for a casino in New York. The tribe has signed with a developer to build one of the planned Indian casinos in the Catskills. A Federal court is poised to drop the tribe's land claim against the state because it is not supported by the Federal Government. After years of opposing any governmental presence in New York by an out-of-state tribe, Governor Pataki agreed to give the tribe the right to establish a Las Vegas-style facility in the Catskills. The U.S. Congress and the New York Legislature must still approve this agreement.¹⁹

Seneca-Cayuga Tribe of Oklahoma: The Seneca-Cayuga Tribe of Oklahoma purchased land in New York and declared its intention to build and operate an Indian gaming facility more than 1,100 miles from its reservation in Oklahoma. The Indian tribe claims that it has sovereign authority over these newly acquired lands, which if it were true, would provide the tribe with the right to engage in high-stakes bingo without obtaining approval from the federal government or the State of New York.

The Seneca-Cayuga Tribe asserts that its participation in the land claim litigation involving the Cayuga Nation and the State of New York provides it with political jurisdiction over land in New York. Governor Pataki announced a settlement agreement with the Seneca-Cayuga on November 12, 2004, allowing the tribe to establish a Las Vegas-style gaming facility in the Catskills. The U.S. Congress and the New York Legislature must still approve this agreement.²⁰

Oneida Tribe of Wisconsin: This tribe is a party to a land claim suit with the Oneida Nation of New York and the Oneida of the Thames Band. On December 7, 2004, the Governor announced an agreement with the tribe that will allow them to establish a Las Vegas-style gaming facility in the Catskills in exchange for the tribe dropping their land claim. The U.S. Congress and the New York Legislature must still approve this agreement. The agreement is opposed by the Oneida Indian Nation of New York.²¹

¹⁸ "Local tribes unable to play," *Las Cruces Sun-News*, November 14, 2004 "[Tribal chairman] Houser said it is his hope the Fort Sill Apaches can return to New Mexico under an act of Congress that would grant land to the tribe as compensation for the U.S. government's past acts." (Source: "Okla. Apaches Seek to Build N.M. Casino," *Albuquerque Journal*, November 7, 2004.)

¹⁹ "Midwest Tribes See Big Payoffs in the East," *The New York Times*, March 24, 2003

²⁰ Press Release from Office of Governor George Pataki on November 12, 2004; "Midwest Tribes See Big Payoffs in the East," *The New York Times*, March 24, 2003

²¹ "Land deals draw various reactions," *The Syracuse Post-Standard*, March 12, 2005.

Ohio

Eastern Shawnee Tribe of Oklahoma: The tribe is preparing a 4 million acre land claim suit and is seeking to build anywhere from five to seven casino resorts in Ohio. Additionally, Allen County (OH) commissioners turned down a proposal by the tribe to take out an option on county-owned land for a casino. The tribe has a contract to buy 150 acres in Monroe (OH) and plans to approach state officials in December or January. The tribe would need to enter into a compact with the state for the casinos.²²

Pennsylvania

Delaware Tribe of Oklahoma; Delaware Nation of Oklahoma: These two tribes declared a claim on 315 acres of land in Pennsylvania near Allentown after their plans for a casino on the New Jersey shore failed. The tribes are seeking to build a casino in exchange for dropping their claims. Governor Rendell has so far refused to negotiate with the tribes for a casino.²³

Texas

Delaware Tribe of Oklahoma; Delaware Nation of Oklahoma: In addition to casino plans in New Jersey and Pennsylvania, these two tribes have attempted to build a travel plaza in Texas.²⁴

Kialegee Tribal Town: Attempted to establish lands and gaming in Texas, but were rejected.²⁵

The above-referenced activities are opposed by the majority of Indian nations, including the 24 member-nations of USET. Consequently, we strongly support Chairman Pombo's desire to address these reservation shopping activities by clarifying that Indian tribes cannot cross state lines to establish casinos in states where they are not currently located.

Chairman Pombo's recently distributed discussion draft would prohibit Indian tribes from conducting gaming on lands outside of a State in which the Indian tribe has an

²² "Indians' leveraged efforts for casinos reach beyond Colo.," *The Denver Post*, August 16, 2004; "Allen County, Ohio, leaders turn down offer from tribe on casino," *The Lima News*, November 12, 2004; "Monroe gets look at casino proposal," *The Cincinnati Enquirer*, November 11, 2004

²³ "2 Okla. tribes seek fortune in Penna.," *Philadelphia Inquirer*, July 7, 2003; "...two Delaware Indian tribes from Oklahoma want to reclaim 315 acres in the Lehigh Valley that they say were stolen from their Pennsylvania ancestors 200 years ago...Stephen A. Cozen, the Philadelphia lawyer representing the tribes, said the group is prepared to file a federal lawsuit to reclaim the land and pursue gaming unless they can reach an agreement with [Governor] Rendell to open a casino." (Source: "Indians seek N.E. Pennsylvania land for casino," *Philly.com* article, May 15, 2003.

²⁴ *Newsday.com* article, "Delaware Indian tribes face long odds to win gambling effort," *Associated Press*, May 15, 2003

²⁵ "Kialegee gamble on casino bid," *The Tulsa World*, November 14, 1999)

existing reservation, unless such lands are contiguous to an existing reservation of that Indian tribe in that State. Although we have some technical suggestions to improve the discussion draft, we support the intent behind Chairman Pombo's proposed amendment to IGRA.

Department of Interior Secretary Gale Norton recently noted that, "[t]ribes are increasingly seeking to develop gaming facilities in areas far from their reservations, focusing on selecting a location based on market potential rather than exercising governmental jurisdiction on existing Indian lands."²⁶ If tribes are permitted to conduct gaming in different states far away from their recognized reservations, Secretary Norton's concerns will have been fully realized. There is no precedent for these kinds of activities, and if allowed to continue, it will usher in a new era of "portable sovereignty" across the country.

We applaud the Resources Committee for conducting a hearing on this matter, and we support Chairman Pombo's efforts to develop a common-sense solution to put an end to reservation shopping for gaming purposes.

²⁶ Letter from Department of Interior Secretary Gale Norton to New York Governor George Pataki, Nov. 12, 2002, at 2.